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MEETING

STATE OF CALIFORNIA

STATE LANDS COMMISSION

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ORIGINAL

STATE CAPITOL

ROOM 126

SACRAMENTO, CALIFORNIA

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THURSDAY, DECEMBER 17, 1992

10:00 A.M.

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Vicki L. Medeiros, C.S.R.  
License No. 7871

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COMMISSIONERS PRESENT

Gray Davis, State Controller, Chairman

Leo T. McCarthy, Lieutenant Governor, Commissioner

Susanne Burton, Commission Alternate  
for Thomas W. Hayes, Director of Finance

STAFF PRESENT

Charles Warren, Executive Director

James Trout, Assistant Executive Director

Robert Hight, Chief Counsel

Jane Sekelsky, Land Management Division

ALSO PRESENT

Jan Stevens, Deputy Attorney General

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P R O C E E D I N G S

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3 COMMISSIONER McCARTHY: Good morning, ladies and  
4 gentlemen. This is the meeting of the State Lands  
5 Commission. Welcome to all of you.

6 We apologize for the few minutes delay. Without  
7 any objection, the Minutes of the last Commission meeting  
8 will be approved.

9 The Consent Calendar today, Consent Item 50 will  
10 be moved to the regular schedule.

11 EXECUTIVE OFFICER WARREN: That can remain.

12 COMMISSIONER McCARTHY: We are taking the  
13 following items off of Consent: 5, 31, 38, 49 and 52. They  
14 will all be considered for future actions. The remainder  
15 of the Consent Calendar Items that are before the  
16 Commission, are there comments on those by members of the  
17 public?

18 If not, the remainder of the Consent Calendar  
19 Items will be approved.

20 Okay. We will move to the Regular Calendar, Item  
21 53.

22 EXECUTIVE OFFICER WARREN: We have three Regular  
23 Calendar Items, Commissioners. Three regular items before  
24 you, Items 53, 54 and 55.

25 They are all three handled by our Land Management

1 Division. Jane Sekelsky will present them to you.

2 We have attendance record slips indicating that  
3 there are persons interested in addressing the Commission  
4 on both Items 53 and 55.

5 Presenting 53 is Ms. Sekelsky.

6 (Thereupon Chairman Davis arrived.)

7 MS. SEKELSKY: We have before us an application  
8 by Auburn Investors to construct a marina on the Sacramento  
9 River below the confluence of the Feather River in Sutter  
10 County.

11 The marina is proposed to be off shore of an  
12 existing trailer park. We, as staff, have concerns about  
13 the environmental impact of the project, and after initial  
14 study determined that an EIR should be completed before the  
15 Commission would act on the project.

16 We have disagreement with the applicant for the  
17 need of an EIR and scope of the document. We are facing  
18 time limits to bring this to you for action.

19 Given the fact that we have not yet resolved the  
20 disagreement for the scope of the document, and because of  
21 the Permit Streamlining Act time frames set by law, we ask  
22 you to deny the application, without prejudice to the right  
23 to reapply and go through the process of an environmental  
24 review.

25 We have concerns regarding the location of the

1 project and the very critical types of habitat that exist  
2 in the area as to whether staff would ultimately recommend  
3 approval, but the applicant is free to come back and go  
4 through the EIR process.

5 EXECUTIVE OFFICER WARREN: We have project  
6 proponents present who wish to address the Commission.

7 CHAIRMAN DAVIS: We'll take the proponents.

8 EXECUTIVE OFFICER WARREN: Mr. Faber, Mr. Ranlett  
9 and Mr. Kaveney.

10 CHAIRMAN DAVIS: Maybe you should sit at a chair  
11 so that we can hear you, and the other people in the room  
12 since the mikes and the tapes aren't working today.

13 MR. FABER: My name is Bob Faber. Yes, I used to  
14 be with you on staff. I appreciate being back and having  
15 the chance to discuss this item with you.

16 I have asked Mr. Kaveney, the project proponent,  
17 to be here, and John Ranlett, the senior biologist who  
18 worked on the project, in case there are questions that I  
19 do not cover.

20 What I wanted to do is take a minute to explain  
21 the existing project, the history that is associated with  
22 it and the existing environmental issues to set a context  
23 for what is the basic question that has come up in my mind  
24 from conversations with the staff.

25 I'll try to speak up as I am over here. As Jane

1 mentioned, the proposal is to extend the existing State  
2 Lands Commission lease to place a marina in this area near  
3 the campground. It also would involve moving some existing  
4 rubble into an area long the shoreline to support the  
5 existing vegetation to have an opportunity to recover and  
6 put a couple of walkways from the marina to the on-shore  
7 location.

8           This is part of a project that has quite a bit of  
9 history, and I could condense it a lot. The entire  
10 campground marina facility was reviewed and authorized in  
11 an environmental impact report for the construction of a  
12 larger marina than what is proposed in 1976. The proposal  
13 at that time that was evaluated included the construction  
14 of a restaurant, club house and fuel dock with the marina.

15           The infrastructure on shore to support the marina  
16 facility was constructed, but then over the course of a  
17 couple of years the marina portion was not built for  
18 financial reasons. That did not work out at that point.

19           They came back to the Commission and withdrew the  
20 lease area and only have the lease area on this end, and  
21 they put in the boat launching ramp.

22           CHAIRMAN DAVIS: The Commission had granted  
23 authority for the project, had approved it?

24           MR. FABER: Yes.

25           The project was authorized. It was a

1 significantly larger project than the one before us.

2 CHAIRMAN DAVIS: Why wouldn't the applicant have  
3 sold that, or, assuming that he had approval, convey that?

4 MR. FABER: He gave it back to the Commission  
5 because he was not in a financial position to complete the  
6 portion for the marina. Rather than paying the rents for  
7 the portion he was not using, he gave it back to the  
8 Commission and had a lower rent to pay in the intervening  
9 time period.

10 The reason that the project is proposed at this  
11 point is for, one, environmental recovery. It's part of  
12 the thing that staff and I do not seem to be on the same  
13 wave length.

14 The existing environmental values, I will talk  
15 about in a minute, we believe can best be accomplished  
16 through the type of project that we are suggesting. One of  
17 the things that we are looking for is environmental  
18 recovery.

19 Two, there is boat traffic from downtown  
20 Sacramento many miles that come up to this location, and we  
21 feel if the marina is put in there will be considerably  
22 less traffic because the area below and above is a popular  
23 fishing activity now. If they only need to go from here  
24 instead of miles down the river, it's an advantage. It's  
25 for people who have the boats docked here and having the

1 day use marina for the convenience of people launching the  
2 boats.

3 The boat launch ramp is there, but people that  
4 put in at Discovery Park, it's more convenient for people  
5 not to bring the boats back and forth so much. It has a  
6 nominal economic value, the minimum rents is \$3,000 to the  
7 State and \$15,000 revenue to the county from tax, and I  
8 think in today's economy for the State government, every  
9 dollar is worth something.

10 Lastly, we think that it will be easier to use  
11 the fishing and boating opportunities in the area. There  
12 are three environmental values that have been identified of  
13 significance.

14 There are several others that are important, but  
15 they are not so much debated at this point. The primary  
16 was shade for river aquatic, cover for riparian river  
17 habitat on the river.

18 The value of this habitat is that it provides  
19 shade for fish and mammals and provides cover for fish,  
20 places to dart into the bank and be protected from the  
21 larger predatory fish. It provides food and provides  
22 ecological niches that allow the ecology to grow.

23 So, it's valuable for birds, mammals and fish,  
24 all three. The question is, why would we want to go ahead  
25 and proceed?

1           There are a couple of very good reasons. One, I  
2 need to pass out some photographs, if I could for a  
3 second. These are for the Commission, and this is for  
4 staff. The only difference is that I have a copy of an  
5 aerial photograph in there for them.

6           If you look at the photograph, which is  
7 photograph on the wall, photograph B and C, if you put B on  
8 the right and C on the left, it's contiguous.

9           As you're standing at this location and looking  
10 out toward the river, it shows what the tree vegetation is  
11 on the river. As you see at this spot there are large  
12 breaks in the vegetation, very little trees. There is  
13 little habitat that we need to protect.

14           Secondly, there is quite a bit more habitat on  
15 the far side of the river and both sides of the property  
16 here. The amount of break that currently exists as far as  
17 fish migrating back and forth, it takes time for fish to  
18 pass this. It's not a significant break in the overall  
19 vegetation that is being protected.

20           What is more important is that there is  
21 continuing erosion along the river, and if we don't get the  
22 shore up along here what ultimately is going to happen is  
23 that this will be eroded away and the campground will be  
24 here and what little bit of habitat that is valuable there  
25 will fall in the water and wash down.

1           We're proposing to put the rubble here, shore  
2 that up and allow the area to recover, because when you put  
3 the marina here and these two walkways in, these walkways,  
4 as you see from the photographs, can be placed between the  
5 existing breaks in the vegetation. There is no need to  
6 climb up and down the bank.

7           By the nature of having the walkways, it's easier  
8 for them to access the boats. So, what we feel is that  
9 there would be very, very little impact on this type of  
10 habitat by putting in sixteen pilings out in the water,  
11 bringing in pre-fabricated docks and putting the two  
12 walkways into the shore. There would not be a need to  
13 construct anything on the uphill at all.

14           I wanted to take a second to talk about the  
15 contacts with staff and where the project is at this point.  
16 Remember it was already authorized at one point in time.  
17 Since Mr. Kaveney has been back involved in the project, he  
18 has gotten all of the Federal authorizations to construct  
19 the project.

20           In 1990, the end of 1990, he was working with  
21 staff and received a letter from staff which indicated that  
22 the project process would be that his old lease would be  
23 given back to the Commission and a new lease issued as soon  
24 as the environmental process was completed.

25           It was completed in 1991, fifteen months ago. He

1 was sent a lease, which he signed and sent back to the  
2 Commission.

3 During the intervening period, we had the ongoing  
4 discussion of whether a new environmental impact report is  
5 necessary. We do not feel, for the reasons that we have  
6 talked about, that a new EIR is required.

7 Finally, in October of this year, in conversation  
8 with staff, we agreed let's just go ahead and do a focus  
9 environmental document, supplemental, that deals with the  
10 topics not dealt within the EIR. When we sat down and  
11 started to work out the details, we got a letter that it  
12 was not going to make a difference if we did that or not.

13 I will just read the last sentence of the letter,  
14 in conclusion, based on the concerns outlined above, staff  
15 of the Commission would not be in the position to recommend  
16 approval of the project to the Commission, even after the  
17 receipt of the EIR.

18 That surprised us.

19 CHAIRMAN DAVIS: What were the concerns?

20 MR. FABER: The types of issues, the impacts on  
21 the shade aquatic river habitat and concerns about growth  
22 inducement.

23 I might point out that the environmental impact  
24 report that was done before found that, with a larger  
25 project, existing facilities in the area would be able to

1 support what is there. Now it's a scaled back project,  
2 and, if anything, there is more existing facilities. So,  
3 it's not a likely problem.

4           There was a question raised about what effect  
5 this has on the river habitat and fishing opportunities.  
6 We see the fishing opportunities as being above and below  
7 the marina, not at the marina. The marina would improve  
8 the fishing opportunity, if that's a concern that needs to  
9 be met.

10           Staff sent the letter, and we got together, and  
11 they said we want you to understand how strongly we feel  
12 about this. I have never doubted the staff's conviction on  
13 the subject. They have reemphasized this on several  
14 occasions.

15           The word that I got was that it does not make any  
16 difference. We could go through the project, Commission  
17 policy was such that they did not think that if they were  
18 carrying out Commission policy that you would want a marina  
19 there in any case.

20           I found that personally surprising. Even though  
21 it was calendared for a rejection without prejudice, we  
22 sent a letter last week withdrawing the application and are  
23 reapplying to eliminate the AB-884 deadline problem that  
24 the Commission faces, but we needed an opportunity to  
25 explain the project to you because, as staff I think

1 rightfully pointed out, there are environmental issues, but  
2 we're dealing with them.

3           If we get to the other end of the project and  
4 have done all of the work and have things addressed and  
5 taken care of, if the Commission does not want a marina  
6 there under any circumstances, we want to know that at this  
7 point.

8           In the last two years since we have been back at  
9 the project staff has made a couple of statements that  
10 again surprised me in terms of the current position. It's  
11 an excellent site for a marina and the highest and best use  
12 for the property as it's proposed use as a commercial  
13 marina.

14           Given the history of something that has been  
15 through the environmental process, yes, sometime ago, it  
16 was a bigger project, authorized by Sutter County and the  
17 State Lands Commission issued a lease, and now the folks  
18 have put in the infrastructure and done the stuff on shore  
19 and are going back to complete it, it sounds like no matter  
20 what you do you're not going to put in a marina.

21           I wanted the opportunity to discuss that with  
22 you.

23           COMMISSIONER McCARTHY: The fact that an EIR was  
24 done and the permit was issued in 1976, or thereabouts, is  
25 slightly persuasive but doesn't necessarily control the

1 issue in my mind. It's a pretty good passage of years and  
2 a lot of things change along the river that influence our  
3 perspective.

4 I wanted to ask a question on Mr. Faber's  
5 suggestion that over the span of the last year or eighteen  
6 months that Commission staff has characterized this  
7 application in the manner that he suggested, that this  
8 wasn't a good or ideal or whatever place for a marina.

9 I'm curious why we sent the applicants a copy of  
10 a draft lease or suggested lease if, in fact, we did do  
11 that, and any other correspondence we had which would have  
12 in any objective way induced the applicant to think that we  
13 were well on our way of approving a permit to cover the  
14 proposal before us.

15 MS. SEKELSKY: I think Bob and I will  
16 characterize the correspondence differently.

17 He referred to an appraisal which the appraiser  
18 indicated that it was an ideal site for a marina as the  
19 highest and best use. The appraiser doesn't look at  
20 environmental value but for land use restriction on the use  
21 of the land that affects the value that may be in response  
22 to environmental concerns.

23 If an appraiser made that estimate, it was  
24 without regard to environmental concerns and without regard  
25 of economic feasibility of the project and without regard

1 of the past performance of the lessee. He's looking at  
2 land value only.

3 If having an appraiser indicate that an ideal  
4 site for a marina that would support all of the concerns,  
5 it's an area that is ripe for that kind of development, a  
6 project similar to this one could be inducing, and given  
7 the critical nature of the habitat in the area, it's one of  
8 our major concerns.

9 I do not think that we have done anything to  
10 indicate to the applicants that we are well on the way to  
11 approval of the project. The EIR done before was in 1976.  
12 It was almost twenty years ago, and not adequate by today's  
13 standards given what we know about the remaining habitat of  
14 this type.

15 There are other proposals for new town  
16 developments downstream of the site which would add to road  
17 inducement in the area. We have many issues which Bob  
18 pointed out could be examined in an environmental report.

19 We, as staff, are more than willing to work  
20 through that process. However, it was only fair to the  
21 applicants to let them know that the information that we  
22 have at this point in time, we don't anticipate any  
23 information coming out of the process to persuade us that  
24 the project could be constructed without adverse impact.

25 COMMISSIONER McCARTHY: What was the lease that

1 Mr. Faber referred to?

2 MS. SEKELSKY: We sent a copy of the form lease.  
3 We might in that document indicate what typical  
4 terms would be, in addition to the general standard  
5 provisions.

6 EXECUTIVE OFFICER WARREN: As example of a lease  
7 in the event the project was otherwise acceptable the  
8 applicant would be obliged to sign.

9 It's not an offer to execute a lease.

10 COMMISSIONER McCARTHY: I recommend that you  
11 review that practice.

12 If there is a reasonable prospect that at the end  
13 of the total analysis of the program the applicant is going  
14 to be told that the staff would not recommend it, anything  
15 that induces expenditure of money by the applicant that  
16 doesn't allow them to make a judgment as to whether they  
17 are going ahead or not should be avoided.

18 Maybe in the total correspondence that message  
19 was there, but I would take a look at sending out proposed  
20 drafts of leases way in advance of decisions being made.

21 Let me ask you this question, you devoted some of  
22 the early testimony to talking about the habitat in the  
23 area. Is this and giving us the pictures, is the  
24 deterioration of the habitat is that man inducedd or  
25 natural erosion?

1           MR. FABER: It's both in that there is a certain  
2 amount of erosion that exists on the river at that  
3 location. It's subject to that.

4           There is a certain amount of deterioration  
5 associated with the mere fact that any time where the  
6 public has a place to put in a boat, and the boat ramp was  
7 authorized earlier, and people are near the facility, they  
8 use the bank to go back and forth since the river is  
9 available to everybody.

10           COMMISSIONER McCARTHY: If you showed us pictures  
11 of the area on both sides of the property, the subject of  
12 the application, what would they look like?

13           MR. FABER: The last photograph in the package is  
14 labeled D. If you look on the picture, the left side, the  
15 vast majority of the left side is the habitat to the south,  
16 and you see a little bit on the right-hand side, which is a  
17 bit of the existing property where you can see it's  
18 cleared. B and C show that area.

19           COMMISSIONER McCARTHY: If it were natural  
20 erosion, wouldn't the natural erosion affect the adjacent  
21 areas in a similar pattern that they have affected the  
22 area?

23           MR. FABER: They would have the same effect. The  
24 difference in the two pieces of property is that you have  
25 got -- I'm guessing -- several hundred feet of depth of

1 that type of habitat between the levee toe and the water.

2 At the location where the property is it's thin.  
3 There are only a few trees there. If the erosion continues  
4 at that spot, those will ultimately be washed away.

5 COMMISSIONER McCARTHY: The impression that I  
6 have from what you have said so far is the habitat is  
7 healthier in the adjacent property. I'm trying to decide  
8 how much weight to give to erosion of the habitat in the  
9 land within the application is man induced or natural  
10 erosion, and I come to the conclusion it's mainly man  
11 induced.

12 Is that a fair conclusion?

13 MR. FABER: I could not give you a direction on  
14 that.

15 The significance of the specific habitat that  
16 we're talking about is that margin that exists along the  
17 river. The habitat is as far in as it is several feet  
18 inland. It's not an impact on the fish. It provides shade  
19 for the river and things dropping out of the trees for the  
20 fish.

21 If you erode an area of 200 feet of depth of this  
22 habitat, you can erode for years and years and there is  
23 something on the bank to fall over.

24 If the erosion continues on the site where this  
25 proposal is suggested, once those trees are eroded away,

1 all you have is the existing campground with nothing  
2 hanging over.

3 We want to shore up the existing habitat and  
4 allow for a recovery program so there will not be as much  
5 of the human or natural erosion. I believe that the  
6 property will be able to recover significantly because  
7 people will access the boats across the walkways that go  
8 between the existing vegetation.

9 There is a vertical drop of some ten or twelve  
10 feet during normal water conditions. That area will recover  
11 because it's not subjected to the erosion or human  
12 activity.

13 CHAIRMAN DAVIS: I want to pick up on a couple of  
14 things that you mentioned.

15 Does the staff have a view today, you inferred an  
16 answer, but this is to Charlie, does staff have a view  
17 today whether or not this location or some location nearby  
18 is an appropriate place for a marina?

19 EXECUTIVE OFFICER WARREN: Of course we are  
20 presently basing our conclusions on information not  
21 supported by environmental report.

22 CHAIRMAN DAVIS: I'm generally of the view  
23 responsible development can protect and enhance  
24 environment.

25 EXECUTIVE OFFICER WARREN: Staff would assume

1 that.

2 CHAIRMAN DAVIS: Putting this project aside, I  
3 want to know if the staff believes a responsible developer  
4 of a marina on this site or proximate to it is something  
5 that they prefer or not?

6 EXECUTIVE OFFICER WARREN: Present information  
7 suggested that this particular area would be inappropriate  
8 for a marina or any use that would be -- the geological  
9 formation is unique in that the confluence of the  
10 Sacramento River and Feather River is a major slough.

11 These are pathways for populations that are  
12 endangered or treated. We have main cases for Fish and  
13 Wildlife Service that the environmental issues concerning  
14 that would be involved in putting the marina in this  
15 location need to be fully evaluated in the EIR.

16 The fish and wildlife are subject to the  
17 requirements that nothing be done to affect them in any  
18 way. It is based on that information which we have and our  
19 own understanding of the geology that suggested to us that  
20 the applicant, that we should pause the processing of this  
21 lease application to acquaint the applicant with the  
22 barriers that needed to be overcome, certainly the need for  
23 an environmental impact report to address these issues to  
24 consider the cost of the report, and then to face the  
25 probability after undergoing that expense and that time,

1 which is a good sum in some respects, he's going to face a  
2 difficult task of obtaining approval because of the gravity  
3 of the concerns that these two agencies had.

4 CHAIRMAN DAVIS: Those two being?

5 MS. SEKELSKY: U.S. Fish and Wildlife Service and  
6 the State Department of Fish and Game.

7 CHAIRMAN DAVIS: You indicated that you had all  
8 the Federal -- you can get to that in a second.

9 MR. HIGHT: If I could address the question that  
10 the Lt. Governor asked.

11 Mr. Trout, who has a memory better than mine,  
12 found the lease has a clause, the submission of the lease  
13 by lessor, its agents or representative doesn't constitute  
14 an option or offer to rent the premises on the terms or  
15 conditions or reservation in favor of the lessor.

16 It's the intent to send the lease so that he is  
17 to know that that is a typical draft of terms and  
18 conditions and any changes, if any, will be negotiated from  
19 that.

20 MS. BURTON: Say it in English.

21 EXECUTIVE OFFICER WARREN: The issue before the  
22 Commission for consideration, we have offered to accept a  
23 reapplication in a manner of course for the purpose of  
24 getting an environmental impact report, and I understand  
25 that the applicant is prepared to do that but would like an

1 indication from the Commission that at the end of the road  
2 there would be a good probability that the project would be  
3 approved.

4 Staff cannot give applicants that assurance given  
5 the number and gravity of the environmental concerns that  
6 have been raised. It's his call, the applicants call.

7 I'm afraid that if the process was undertaken, he  
8 could come to you and say, "Why didn't staff tell us that  
9 we were not going to recommend approval of the project?"

10 What we are doing now is warning him that we are  
11 not prepared to say that this project would be approved  
12 because we do not feel that the effects will be mitigated,  
13 and there is no overrideable consideration, and maybe the  
14 environmental impact report can address that.

15 It's the risk that they are taking. We're not  
16 urging them to take it.

17 CHAIRMAN DAVIS: I think we understand that.

18 Let me say this, by general observation, how much  
19 has our Commission staff been reduced by the budget, can  
20 you tell us, in the last two years?

21 EXECUTIVE OFFICER WARREN: When I became  
22 Executive Officer, we had authorized staff of 247. We lost  
23 102 positions. We're at about 140.

24 CHAIRMAN DAVIS: I want to say for the benefit of  
25 the staff, for your children to have a chance to get a job

1 there has been to be responsible growth.

2 I deal with the financial aspects in the State.  
3 We created three million jobs in the 80's. In February of  
4 1991, we have net job loss.

5 This project may not have merit, but the  
6 Commission Members, this Commission Member has to balance  
7 the needs of putting people to work and protect the  
8 resources. We have environmental and financial  
9 responsibility.

10 We cannot look at every project and say we're  
11 against it. The staff will diminish in size and  
12 applications will take longer and longer to process, et  
13 cetera, et cetera, et cetera.

14 EXECUTIVE OFFICER WARREN: You will find in the  
15 large number of Consent Items before you that fact is  
16 acknowledged.

17 The fact that we have the instance of some  
18 applicant who is unhappy with the staff's work should not  
19 be taken to indicate that the staff is too busy to not  
20 realize the need to balance.

21 CHAIRMAN DAVIS: It's a former member of your  
22 staff actually working before you got there, Charlie, who  
23 is well-aware of the good quality work that the staff does  
24 as well as the hurdles in overcoming a staff  
25 recommendation.

1           COMMISSIONER McCARTHY: How much of an  
2 investment -- tell me again what the facility is that is  
3 there now and how much of an investment is there?

4           MR. FABER: The existing facility is all of the  
5 upland campground with the bait shop and the rest rooms and  
6 other ancillary infrastructure. It's a campground.

7           There are hookups along here that people come in  
8 and make use of on a rotating basis.

9           COMMISSIONER McCARTHY: What is the dollar  
10 investment involved?

11          MR. KAVENEY: We have \$175,000 in the campground  
12 and launching ramp since 1975 when we acquired the  
13 property.

14          COMMISSIONER McCARTHY: You collect rents or  
15 revenue on this?

16          MR. KAVENEY: Yes.

17          COMMISSIONER McCARTHY: Not to throw a totally  
18 new factor in here, has staff had any conversation with the  
19 applicants about the possibility of looking along the river  
20 in the proximate vicinity to see if there is an opportunity  
21 for staff to give the applicant some chance to have this  
22 kind of development somewhere else where there is not a  
23 threat to habitat?

24          MS. SEKELSKY: We have not, but we will be  
25 willing to explore that.

1           COMMISSIONER McCARTHY: Is that something that  
2 your clients would be interested in?

3           MR. FABER: The obvious limitations are that,  
4 number one, you have other places that are more important  
5 for the habitat value and otherwise that are privately  
6 owned, but he owns the property.

7           COMMISSIONER McCARTHY: Are you willing to  
8 explore the opportunity so that your client has the chance  
9 to go forward with the kind of development?

10          MR. FABER: One never hates to shut all doors,  
11 but with \$175,000 invested in the site, it's difficult to  
12 pick up and do something else.

13          COMMISSIONER McCARTHY: No one is proposing to  
14 shutdown the existing operation. That's not part of the  
15 conversation as I heard it so far.

16          MR. FABER: The reason that I referenced that is  
17 the current operation is of marginal economic value. You  
18 barely break even, if at all, because the ability to have  
19 the marina part of the original application, the economics  
20 of the project was a motivating thrust to put in the  
21 project. Just the campground is very, very difficult.

22                 Could I address a couple of the points that  
23 Mr. Warren brought up? You're correct, I said that all of  
24 the Federal authorizations had been obtained.

25                 That comes through the process of the Corps of

1 Engineers being at the property and other Federal agencies  
2 that are involved, and the Fish and Wildlife Service has  
3 reviewed the project and did not in anyway try to stop it  
4 through the Federal authorizations process.

5 When the study was done from the Commission, Fish  
6 and Wildlife commented and said that a negative declaration  
7 was adequate for the property. They did not look at the  
8 property.

9 CHAIRMAN DAVIS: Was this in 1976?

10 MR. FABER: The recent evaluation process.

11 Mr. Warren is correct that Fish and Wildlife  
12 Service has designated this reach of the river as having an  
13 important value, but it also specifically stated in the  
14 same regulation that things that do not have significant  
15 impact will be allowed to be built, and we're contending  
16 that responsible development can be done without  
17 significant impact and can enhance environmental values.

18 Fish and Game raised questions, and the two were  
19 the loss of fishing opportunity, and we're trying to deal  
20 with that subject of looking where the fishing opportunity  
21 exists.

22 The contention that the applicant has is that  
23 it's above the confluence and below the property. It's  
24 interesting to note that within the last few weeks a person  
25 on contract with the Department of Fish and Game who is

1 responsible for counting where the fishing activities take  
2 place here has stated that the fishing doesn't take place  
3 at the spot where this is going to take place.

4 We're trying to get that person to talk to the  
5 right person with Fish and Game.

6 The remaining issue with Fish and Game is the  
7 notion of what affect on the species, like the endangered  
8 salmon, we're looking at the habitat and the ability to  
9 survive and avoid the predators, and that is why the shaded  
10 habitat is important. It's the shade and underwater  
11 structure associated with it.

12 We believe we're going to improve that because  
13 with the existing erosion and human traffic that habitat is  
14 being degraded. If we lift the people above that and  
15 lessen the erosion process, we give it an opportunity to  
16 recover, and it's a benefit there.

17 Do not misunderstand, and staff, I appreciate  
18 their candor, and I want to know if that's what they feel.  
19 I disagree, and we're trying to say for the reasons as we  
20 have discussed it's a meritorious project, but we want to  
21 know if the Commission shares the view that no matter what  
22 we do we cannot put in the marina.

23 CHAIRMAN DAVIS: You'll have to check for  
24 yourself what the feeling is. We do not want to ram  
25 something down the staff's throat.

1           What I suggest on this, or give the direction to  
2 the staff to work with the applicant and get back to us in  
3 sixty days or so to see if there is a portion of the  
4 project or modification in the existing proposal that could  
5 meet or reduce the objection.

6           EXECUTIVE OFFICER WARREN: The time constraints  
7 are such that the Commission today has to act on the  
8 staff's recommendation.

9           We will continue to work with the applicants.

10          CHAIRMAN DAVIS: Do you agree with that?

11          MR. FABER: I do not want to mischaracterize that  
12 staff is not willing to work with us.

13          They are coming up with a conclusion that tells  
14 me there is no point in going forward, and I'm not looking  
15 for the Commission to make a decision when they do not have  
16 the information, but I want to know that when we're done  
17 with the process that you have made the decision that you  
18 do not want the project anyway.

19          We have eliminated the AB-884. We withdrew the  
20 application.

21          EXECUTIVE OFFICER WARREN: The letter to which  
22 Mr. Faber is referring to, the additional letter that they  
23 withdrew the application with a certain understanding set  
24 forth, it's not an unconditional withdraw. If it were, we  
25 would have no problem with that.

1           There has to be environmental documentation. That  
2 will take some time, more than sixty days. Staff is not  
3 prepared to make a decision. We cannot make a decision  
4 until the documentation is completed.

5           We will continue to work with them to further the  
6 environmental documentation to scope it out fairly and  
7 adequately to make sure that the concerns that we have  
8 identified are met in the review. Based on that, we will  
9 bring the documentation back to you with our evaluation.

10           CHAIRMAN DAVIS: All that is likely to take?

11           EXECUTIVE OFFICER WARREN: Several months.

12           MS. SEKELSKY: Under the Permits Streamlining  
13 Act, we have a year from the time that the application is  
14 deemed complete. That doesn't mean that we will have to  
15 take the full year, but it could.

16           CHAIRMAN DAVIS: After the application is  
17 complete?

18           MS. SEKELSKY: We have one year following receipt  
19 of the complete application to complete the environmental  
20 review process and bring it to you for action.

21           EXECUTIVE OFFICER WARREN: It's up to them to  
22 complete the documentation.

23           CHAIRMAN DAVIS: Which will take how long?

24           EXECUTIVE OFFICER WARREN: I can't say.

25           CHAIRMAN DAVIS: I feel we are not bound by

1 previous Commission acts like a court. We did act in 1976,  
2 and I do not see anyone challenging that we did a larger  
3 project, so I assume that is an accurate statement.

4 I assume that you have the financing in place to  
5 go through this?

6 MR. FABER: Now?

7 Yes, I believe that the financing is available.  
8 That is not the problem.

9 Mr. Kaveney any was placed in involuntary  
10 bankruptcy at the time and he won the case. Once you're  
11 placed in it, you're limited in terms of the ability for  
12 financing.

13 He can go forward now.

14 CHAIRMAN DAVIS: I'm sympathetic to the  
15 applicant, but that doesn't mean that I'm going to vote for  
16 the project.

17 We're in a different era. What is reasonable,  
18 Charlie, in terms of us taking another look at this in six  
19 or nine months?

20 EXECUTIVE OFFICER WARREN: We can look at it any  
21 time and give a status report. We may not be able to come  
22 forward with the final recommendation. It's beyond our  
23 control.

24 MS. SEKELSKY: Assuming that the project that is  
25 submitted has gone through the study process, we're two

1 months into the application process, unless there is a  
2 reason that the environmental impact cannot be done in a  
3 six to nine month period, it's a reasonable time.

4 CHAIRMAN DAVIS: Do you have a sense of this now?

5 COMMISSIONER McCARTHY: Now that we have stated  
6 our position clearly on the matter, I will add that you at  
7 least explore alternative sites. Your applicant has to be  
8 willing to do that, and if not, it's his choice entirely.

9 But you should at least look at that to see if  
10 there is that option for you.

11 MR. FABER: We will, definitely.

12 CHAIRMAN DAVIS: Could we take a look in ninety  
13 days?

14 I'm sensitive to people spending a lot of money  
15 and hearing no.

16 EXECUTIVE OFFICER WARREN: We will give you a  
17 status report at the meeting of the State Lands Commission  
18 in April.

19 CHAIRMAN DAVIS: Okay. We will have the  
20 applicant here.

21 COMMISSIONER McCARTHY: I'll give you back the  
22 pictures today to cut down on the expenses of having to  
23 reproduce them.

24 CHAIRMAN DAVIS: Anything further?

25 MR. FABER: Not other than to say that if the

1 staff wishes for you to go ahead and vote, it doesn't make  
2 a difference.

3 The nature of the letter was conditional that I  
4 have to talk to you. I thought that the letter submitted  
5 exactly the same application that was under the process all  
6 along.

7 I appreciate the time and consideration you have  
8 given.

9 CHAIRMAN DAVIS: All right. We need to deny the  
10 application?

11 EXECUTIVE OFFICER WARREN: Yes.

12 MS. SEKELSKY: That's the staff recommendation.

13 CHAIRMAN DAVIS: Okay. It's unanimous.

14 Item 54.

15 MS. SEKELSKY: It's a project we're excited about  
16 on Staten Island in the Delta. This involves a proposal by  
17 the landowners to work together with the State Lands  
18 Commission to develop a plan for ber, restoration on the  
19 outboard side of the levee to restore vegetation and  
20 riparian habitat and stabilization for the levee to protect  
21 the island from flooding.

22 It has possibility to provide environmental  
23 benefit and stabilization, and we think that it serves as a  
24 prototype for future projects on levee projects.

25 CHAIRMAN DAVIS: Any opposition to the project?

1 All right. Consider that three votes for  
2 approval.

3 MS. SEKELSKY: Item 55 is another item  
4 recommending a rejection of application merely because of  
5 procedural problems.

6 We have the time running on the Permit  
7 Streamlining Act. This is by Sutter County to maintain an  
8 existing boat launch ramp and extend it on the Feather  
9 River near Yuba City. We have worked with the county and  
10 thought we had negotiated agreement as to their coming  
11 forward with the permit from the Commission.

12 They executed a permit document and had crossed  
13 out our standard provisions. We worked with them and agreed  
14 that we could waive two or three of the provisions but not  
15 the provisions that protected the Commission for liability  
16 pertaining toxics, hazardous waste, bonding and insurance  
17 requirements.

18 The county wants those waived and will not sign  
19 the document. So, staff recommends denial without  
20 prejudice and authorization to eject the county and the  
21 boat ramp from state land.

22 CHAIRMAN DAVIS: We have Supervisor Licari  
23 indicating that he would want to speak.

24 MR. LICARI: My name is Pete Licari. I am a  
25 member of the Sutter County Board of Supervisors and have

1 been designated by the Board to represent Sutter County on  
2 the issue before you.

3 I have a short prepared statement which, with  
4 your consent, I would like to read. After reading the  
5 statement, I would be pleased to answer any questions that  
6 you may have.

7 I would also like to introduce to the Commission  
8 the Sutter County Public Works Director, Bob Barrett, who  
9 has advised our Board on this matter and who will help me  
10 with any technical issues which arise.

11 CHAIRMAN DAVIS: If you would, since we have the  
12 statement, is it possible to summarize points you want to  
13 make and then answer the questions of the Commission  
14 Members?

15 MR. LICARI: Yes. I'll try. If not, I'll have  
16 Mr. Barrett respond.

17 I'm not too familiar with the issue as this has  
18 just become -- as a Board Member, I was not on the  
19 committee that discussed the general proposal of the  
20 proposed lease. The real problem is the liability that  
21 would be imposed on Sutter County if the lease is signed as  
22 submitted to the county.

23 We have been advised by our counsel that this  
24 provision really is unfair because we have no control. The  
25 county has no control of the hazardous waste that is coming

1 from above the ramp that is in question.

2 The other provision is that Sutter County leases  
3 the boat ramp from Levee District No. 1. So, consequently  
4 we would be accepting the liability for lands that we are  
5 leasing for this boat ramp.

6 I think that the real question on the toxic waste  
7 problem is that the county would be liable for anything  
8 that comes down from any other area. I don't understand  
9 why they have put that provision in there.

10 The other thing, the Lands Commission I  
11 understand wishes us to remove that portion of the existing  
12 boat ramp which occupies State owned lands. I believe that  
13 we have not been able to find how long ago that the boat  
14 ramp was put in. It was several years ago, and Mr. Barrett  
15 can probably speak to that.

16 We have no authority to negotiate with the  
17 Commission on this issue, and we hope that you concur with  
18 our position to ensure the public's use of the boat ramp.  
19 There is a boat ramp ten miles upstream in Live Oak, and  
20 another one five miles downstream, which is mostly out of  
21 the water most of the time and almost unusable.

22 What we're trying to do is assist the  
23 constituency in Sutter County in having a viable place to  
24 put their boats in the water.

25 With that, I would address any technical

1 questions that you have to Mr. Barrett as I am not that  
2 familiar with it.

3 CHAIRMAN DAVIS: Thank you very much.

4 Anyone who wants to respond to the comments that  
5 the Supervisor made with reference to the toxic problem?

6 EXECUTIVE OFFICER WARREN: That's our standard  
7 lease provision. They are boiler plate language in  
8 conformance with the Federal and State law.

9 MS. SEKELSKY: These are part of the standard  
10 provisions. They are entered into the lease form and  
11 approved by the Commission in the last year as part of the  
12 lease form.

13 They are provisions are intended to protect the  
14 Commission as the agency having jurisdiction over the State  
15 owned lands from liability that may result from toxic  
16 materials being released on the property or reaching the  
17 property and hazardous substances or conditions that may  
18 exist on the property.

19 There are in all of the leases now. We feel it's  
20 necessary to retain the conditions and protect the  
21 Commission from the liability.

22 I do not know, having reviewing it from the  
23 County perspective, if it adds liability to what they have.  
24 With regards to the concern about public access, we  
25 encourage that as an appropriate location, and it's not the

1 intention to argue with the need for the launch ramp or the  
2 desirability of it.

3 We're concerned about the liability that the  
4 Commission incurs, and that's why we require the  
5 provisions in all of the leases.

6 CHAIRMAN DAVIS: Do we just amend leases coming  
7 due this year?

8 MS. SEKELSKY: The leases coming before you for  
9 new lease term or amendment would have that provision added  
10 to them or any new lease.

11 CHAIRMAN DAVIS: Okay.

12 MS. BURTON: Sounds to me like as the laws  
13 change, as we learn about toxic dumps and spills, we are  
14 just trying to protect the Commission.

15 The county feels that they are put at risk for  
16 other parties that might cause a problem to develop and yet  
17 we're trying to say you're operating the facility, and you  
18 have to be responsible for your actions; is that right?

19 MR. HIGHT: Right, for your actions and the  
20 actions of the people who use the facility.

21 MS. BURTON: If there are unauthorized uses, they  
22 are responsible because they are to keep the uses  
23 consistent for the purpose for which the lease is given,  
24 and it's not to have hazardous materials there?

25 MR. HIGHT: Correct.

1 MS. BURTON: I do not see how we can avoid this.  
2 Are you going to let the people dump things  
3 there?.

4 MR. BARRETT: Bob Barrett, as identified by  
5 Supervisor Licari. I'm the Public Works Director for Sutter  
6 County's Board of Supervisors.

7 The concern in not signing the lease is not in  
8 holding the State harmless in the event of actions that the  
9 County takes but the concern of third parties over which  
10 there is no control.

11 This boat ramp is a free boat ramp. There is no  
12 county staff on-site governing the use. No fee is  
13 involved. The county has no control over anyone using the  
14 site. Any third parties could take action without  
15 knowledge or permission and cause a problem to occur on  
16 lands that we're leasing from a third party, if you will.

17 That is where the concern comes from, not the  
18 liability action.

19 CHAIRMAN DAVIS: Are you authorized to charge a  
20 fee for the use of that landing?

21 MR. BARRETT: It would require action from the  
22 Board of Supervisors to initiate a fee.

23 CHAIRMAN DAVIS: I think you can understand that  
24 if we're allowing you to operate a resource, that you have  
25 the responsibility to make sure that that resource is used

1 wisely. If you do not want to be the operator, that's  
2 another story.

3 MR. BARRETT: There is that concern out there.

4 The primary concern is that the Board takes with  
5 the issue that we will forego the grant rather than take on  
6 the liability. The recent letter that we received from  
7 staff indicating litigation to remove the existing portion  
8 of the ramp on the State owned lands, that ramp has been in  
9 existence in excess of 50 years.

10 This is something that in 1969 Yuba City was  
11 operating the ramp, and they operated it until the Board of  
12 Supervisors took it over and leased it from the Levee  
13 District.

14 The Board would walk away from the ramp rather  
15 than sign the lease agreement, which would close the  
16 facility for the public use rather than assume the added  
17 liability in this litigious society.

18 EXECUTIVE OFFICER WARREN: Reference was made to  
19 added liability.

20 Under the State law to which this language refers  
21 that this liability is a present liability that they have  
22 and one that we would have if we did not protect  
23 ourselves. I may be wrong, and I have not explored this,  
24 but it's my understanding that there is, under those laws,  
25 there is present responsibility.

1           MR. HIGHT: In the event that we were to take  
2 this clause out and went ahead and leased to the County,  
3 it's my opinion that the County is still liable under the  
4 Super Fund or State laws for toxic problems that would  
5 occur.

6           MR. STEVENS: I think you're right. The  
7 potentially responsible parties include everyone exercising  
8 any kind of control or operation with respect to a site.

9           The liability is strict. Certainly, it could  
10 involve the county reclamation districts and lessee that  
11 they are under, and the efforts to name the State in the SP  
12 Dunsmuir spill in the Sacramento River could be pointed  
13 to.

14          CHAIRMAN DAVIS: We're not adding any additional  
15 burden on you. Our lawyers believe that you have that  
16 burden.

17          MR. BARRETT: Our attorney has expressed to me  
18 that we would be named under existing legislation. He does  
19 not feel that it's in the County's interests to hold the  
20 State harmless in this issue.

21          That is his position, not that we do not have  
22 liability.

23          COMMISSIONER McCARTHY: We're representing the  
24 same taxpayers. Any litigation is going to sue either the  
25 People of California or the People of Sutter County.

1 Supervisor Licari, I applaud the lead that the  
2 county has shown to operate it.

3 I appreciate your counsel trying to provide  
4 advice to reduce -- it doesn't reduce our being a defendant  
5 but forces all taxpayers in the State.

6 We do not want to be unreasonable in this in  
7 anyway, but it's an accepted principle in all such cases  
8 that it's the operator of the facility that has the  
9 opportunity to exercise prudent management. We're at a  
10 distance here. We're not down there looking at the ramp or  
11 operating it.

12 We have no reasonable way to make sure that  
13 irresponsible people do not use it. It's the management of  
14 the facility.

15 The Federal government does that to the State  
16 when we manage different facilities. That has to be the  
17 view point.

18 I do not think that we would hesitate to take  
19 responsibility. It's two agencies trying to play the ball  
20 back and forth, but the question is the issue of who has  
21 management; and, therefore, the real opportunity to prevent  
22 the negative conduct should be the party that figures out  
23 how to minimize the litigation, and, gentlemen, it's your  
24 agency.

25 It's not something that we can control.

1           MR. LICARI: Mr. Chairman, on the second to last  
2 page of my comments, one of the other recommendations of  
3 your staff is that you authorize staff counsel or the  
4 Attorney General to take all steps necessary including  
5 litigation to remove that portion of the existing ramp  
6 which occupies State owned lands.

7           We lease the boat ramp from Upland Territory from  
8 Levee District 1. We have no authority to negotiate with  
9 the Commission on this issue.

10           But, if I may, aside from the boat ramp, and I  
11 have only been a Supervisor for two years, I am appalled  
12 with the rules and regulations piled one on top of the  
13 other.

14           We can't -- it's becoming impossible to legislate  
15 at the local level because of all of the turmoil that is  
16 involved. You go for a grant, you wait nine months. You  
17 cut fourteen trees for one application.

18           I do not know, and I hope I'm talking to the  
19 right people because something has got to be done to stop  
20 this bureaucracy from eroding everything that we are trying  
21 to do.

22           I see this as one of them. If the law is  
23 provided for the public, then the regulations come behind  
24 it, and it seems if the State approve \$100 to us, by the  
25 time that it gets to the recipients it's worth \$5. Maybe

1 I'm speaking out of turn.

2 Excuse me. It's real, real frustrating. We  
3 cannot make a move, such as has been done 40 years ago, and  
4 now we're tied by the ankles and cannot walk.

5 I'm sorry. I had to make the comments.

6 CHAIRMAN DAVIS: I empathize with your  
7 frustration. The regulatory process is out of hand, and  
8 it's the consequence of twenty-five agencies regulating one  
9 another. It's mind boggling.

10 In the next twenty-five years, you will see  
11 substantial changes for the good, no question.

12 EXECUTIVE OFFICER WARREN: May I make the  
13 suggestion that I think that the County representative  
14 should assess their position on the Section 4 language, and  
15 upon doing so may include in the standard lease that we  
16 could offer --

17 MS. SEKELSKY: The applicant can withdraw and  
18 reapply.

19 CHAIRMAN DAVIS: Do you understand what they are  
20 saying?

21 A law passed by very well-intentioned people, and  
22 actually I do not know if I voted on it, but requires that  
23 we act within a year, which is not an unreasonable rule.

24 We're up against the year, and I assume this is  
25 the last meeting before the year expires. All we can do is

1 deny. We have to decide today on the current application.

2 If you refuse to accept the posed lease, the only  
3 option is either to accept our verdict that we will have to  
4 turn you down, and you no longer operate the facility, or  
5 you can withdraw the application and resubmit, allowing the  
6 staff the opportunity to work with you to minimize to the  
7 extent we can the problems that the legislation imposes.

8 MR. LICARI: If I may, Mr. Davis, I'm concerned  
9 about the litigation, and to remove the old ramp that has  
10 been there for approximately 50 years.

11 You want us to withdraw the application, we will  
12 withdraw it. But I'm upset with the last comment of  
13 removing the boat ramp that has been there long before any  
14 of these environmental things came up.

15 I'm not an environmental nut, but I believe in  
16 it.

17 EXECUTIVE OFFICER WARREN: Staff is persuaded to  
18 remove recommendation number 5.

19 CHAIRMAN DAVIS: You beat the staff into  
20 submission. We will delete that provision.

21 You will reapply and work with the staff. There  
22 are circumstances that we cannot get around.

23 MR. LICARI: Yes. It's all right.

24 CHAIRMAN DAVIS: The application is withdrawn and  
25 the staff will eliminate the condition that Mr. Warren

1 described, and you can work with staff to accommodate some  
2 of the concerns.

3 MR. LICARI: I appreciate having the opportunity  
4 to speak to this group, a first time for me.

5 I have been a little nervous. Nonetheless, we  
6 really appreciate the opportunity to come and speak to  
7 you.

8 EXECUTIVE OFFICER WARREN: One final item,  
9 Mr. Chairman, Item 47 was inadvertently not removed from  
10 the Consent and put over for further meeting.

11 CHAIRMAN DAVIS: No objection?

12 So ordered.

13 That concludes business at 12:05.

14 (Thereupon the meeting was adjourned  
15 at 12:05 p.m.)

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1                                    CERTIFICATE OF SHORTHAND REPORTER

2

3                    I, VICKI L. MEDEIROS, a Certified Shorthand

4 Reporter of the State of California, do hereby certify:

5                    That I am a disinterested person herein; that the

6 foregoing hearing was reported in shorthand by me, Vicki L.

7 Medeiros, a Certified Shorthand Reporter of the State of

8 California, and thereafter transcribed into typewriting.

9                    I further certify that I am not of counsel or

10 attorney for any of the parties to said hearing nor in any

11 way interested in the outcome of said hearing.

12                    IN WITNESS WHEREOF, I have hereunto set my hand

13 this nineteenth day of January, 1993.

14

15

16

17 

18                    VICKI L. MEDEIROS

19                    Certified Shorthand Reporter

20                    License No. 7871

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